IN THE HIGH C OURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 28 OF 2004

Shri Jeetendra R. Deshprabhu,
Landlord, Businessman,
major of age,
resident of Pernem, Goa. .... Petitioner/Original Complainant.

1. Laxmikant Yeshwant Parshekar,
   Principal of Harmal Panchacroshy
   Higher Secondary School,
   Harmal, Pernem, Goa.
2. Shri Laxman Joshi,
   Editor, Daily Gomantak and Publisher,
   Gomantak Office, Gomantak Bhavan,
   St. Inez, Panaji, Goa.
3. Shri Jayan Sambhaji,
   working Editor, Daily Gomantak,
   Gomantak Office, Gomantak Bhavan,
   St.Inez, Panaji, Goa.
4. State.
   Through Public Prosecutor. .... Respondents/Original Accused.

Shri S.S. Kantak with Ms. T.M. Rane, Advocates for the Petitioner.

Shri A. Kansar, Advocate for the Respondents No.2 and 3.

Shri S.N. Sardessai, Public Prosecutor for the Respondent No.4/State.

CORAM: N. A. BRITTO, J.

DATE: 23rd December, 2004.

O R D E R:

A short point which requires consideration is whether this petition, filed under Section 397 of the Code of Criminal Procedure, 1973 (Code, for short) should be entertained by this Court, by by-passing the Court of Sessions ?

2. The petitioner is the complainant in C.C.No.6/01/C who is prosecuting the accused (Respondents No.1 to 3) for having committed offences punishable under Sections 499, 500 and 501 I.P.C. It appears that the case of the petitioner in the said complaint was closed on 11.2.04 and posted for recording the statement of the accused under Section 313 of the Code.

3. The petitioner invoked the jurisdiction of this Court under Section 482 of the Code but his petition was not entertained by this Court, by Order dated 11.6.2004, as the petitioner was entitled to a remedy of revision. At the same time it was held that the order of the learned J.M.F.C. closing the case of the complainant was not an interlocutory order and the same was revisable.

4. On behalf of the petitioner, reliance has been placed on five decisions of this Court, while on behalf of the respondents, reliance has been placed on yet another decision of this Court. On behalf of the petitioner, reliance has also been placed on a Bench decision of Madhya Pradesh High Court in the case of **State of Madhya Pradesh v. Khizar Mohammad and others (1997 Cri.L.J. 549).** The decisions on which Shri S.S. Kantak, the learned counsel of the petitioner has placed reliance are as follows :-

'(1) **Madhavlal Narayanlal Pittie v. Chandrashekhar Chaturvedi (1974 B.L.R 633**).

(2) Tejram s/o Mahadeorao Gaikwad v. Smt. Sunanda w/o Tejram Gaikwad and others (1996 Cri.L.J. 172).

(3) Padmanabh Keshav Kamat v. Anup R. Kantak and others

(1999 Cr.L.J. 122).

(4) M/s. K.K. Agencies v. Shri A.C. Ramanujam *(unreported decision dated 28.1.2000* in Criminal Revision Application No.48/99).

(5) **M/s. Prashika v. M/s Koshy Builders Pvt. Ltd. (2002 (1) Goa L.T. 129.**

Shri Kantak has also placed reliance on the case of **Jagir Singh v. Ranbir Singh and another [(1979) 1 S.C.C. 560].**

5. Shri Kantak, the learned counsel has submitted that the choice is given to a litigant either to approach this court or the Court of Sessions and the same could not be taken away by judicial interpretation. Shri Kantak has submitted that the judgment of this Court in the case of Padmanabh K. Kamat (supra) did not follow the Division Bench judgment in the case of Madhavlal Pittie (supra) and therefore this Court should follow the judgment in the case of Madhavlal Pittie (supra).

6. Shri Kantak has submitted that the judgment of this Court in the case of Tejram Gaikwad (supra) could be considered as per incuriam as the judgment of the Division Bench in the case of Madhavlal Pittie was not brought to its notice. Shri Kantak has also submitted that the judgments in the case of M/s. Prashika (supra) and M/s. K.K. Agencies (supra) have taken a contrary view and therefore the point under consideration requires to be decided by a larger bench and therefore a reference be made to a larger Bench. Alternatively, Shri Kantak has submitted that the petitioner's case is certainly exceptional in

nature and therefore this revision filed by the petitioner should be entertained by this Court.

7. On the other hand, Shri Kansar, the learned counsel on behalf of the accused has submitted that whether a revision petition should be entertained against an order or not is itself a matter of discretion and that it is a long standing practice which is followed is that when two Courts have been conferred with concurrent jurisdiction, the lower of them should be approached first. Shri Kansar has placed reliance on the case of **Ms. Cerena D'Souza v. State of Maharashtra and others (2002 Cri. L.J. 4196)**. Shri Kansar has also placed reliance on the case of **Krishnan and another v. Krishnaveni and another (A.I.R. 1997 S.C. 987).**

Section 397 deals with the revisional powers of this Court and Court of Sessions. It reads as follows :-

" 397. - Calling for records to exercise of powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation ...

(2) ...

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

8. In my view none of the contentions raised by Shri Kantak, the learned Advocate of the Petitioner can be accepted. As can be seen from the Division Bench judgment in the case of Madhavlal N. Pittie (supra), what was referred to the Division Bench was a question whether the High Court had jurisdiction to entertain the revision application after the new Code came into force and the learned Division Bench of this Court, after reading the provisions of S.397 of the Code, came to the conclusion that :-

" Both the High Court and the Sessions Judge have got the power to go into the record and have jurisdiction to pass the necessary orders after examining the record of any proceeding. It is not, therefore, that either the High Court or the Sessions Judge, has no jurisdiction to go through the record or to entertain an application if made by any person and to pass the necessary orders thereon. It does appear and particularly on the reading of sub-s. (3) of s.397, that any person interested can move the Court, either the High Court or the Sessions Judge, by making an application for revising the order of the inferior Court. It is for that Court before whom an application has been made to entertain it or not. That, however, is a different question. But the jurisdiction of the Court is not barred if the Court is inclined to exercise the powers vested in it or him. If, as is contended, the High Court has no jurisdiction to entertain a revision application then that is likely to cause prejudice to one of the parties

and that party will be put to a disadvantage. If the contention raised on behalf of the State is accepted then in that case every revision application against an order of a Magistrate must be made to the Sessions Judge and can never be made to the High Court. If that is so, then the High Court will not be in a position to entertain a further application at the instance of that party and the order which is passed by the Sessions Judge would be a final order, as provided in sub-s. (3) of S.399 of the new Code. ... On the contrary we find in s.397 that the power has been given to both the Courts simultaneously and on the wording of s. 397 a party is not precluded from invoking the powers of any of them. It is left to the party concerned to avail of any of the two remedies but he cannot however avail of both the remedies once he has chosen his course. ..... On the reading of these provisions together, we are of the view that the jurisdiction of the High Court in entertaining the revision application against an order of the Magistrate is not barred and it is not necessary for a party in all cases to file a revision application before the Sessions Judge. The High Court may or may not interfere with the order but that is not to say that this Court has no jurisdiction or power to entertain the revision application. (emphasis supplied. "

9. In the case of Tejram Gaikwad (supra) this Court stated as follows :-

" First of all the application deserves to be dismissed on the ground that the applicant has not filed the criminal revision before the Sessions Judge, having jurisdiction over the matter. It is undoubtedly true that S.397 of the Code of Criminal Procedure confers jurisdiction of revision concurrently on

the Court of Sessions as well as the High Court, but it is equally true that where the jurisdiction is conferred on two courts, the aggrieved party should ordinarily first approach the inferior of the two Courts unless exceptional grounds for taking the matter directly before the superior Court is made out. Since the applicant has come directly to the High Court, though he could have filed the revision before the Sessions Judge and there are no exceptional reasons, the revision application deserves to be dismissed on this count alone. This Court does not encourage filing of revision application under S.397 of the Code of Criminal Procedure directly before this Court if it could be challenged in revision before the Sessions Court having jurisdiction of revision over the matter. "

10. It is true that attention of this Court in the case of Tejram Gaikwad (supra) was not drawn to the Bench decision of this Court in the case of Madhavlal Pittie (supra) but it requires to be repeated and stated that what the Division Bench decided in the said case is that the jurisdiction of the High Court to entertain the revision application against an order of the Magistrate was not barred and it was not necessary for a party in all cases to file a revision application before the Sessions Judge. It is to be noted that it is a well settled principle that the decision is an authority for what it actually decides. What is the essence in a decision is its ratio and not other observations found therein nor what logically follow from the various observations made therein. This position was recognised by this Court in the case of Padmanabh Kamat (supra when this Court stated that:-

' All that the Division Bench has held, it is to the effect that the

jurisdiction of the High Court and Sessions Judge to entertain a revision application, being concurrent, the High Court can entertain a revision application which is filed directly to it. The Division Bench, however, did not lay down that it was obligatory on the part of the Court to entertain and decide the revision application which is filed directly to it. ' The Court further observed that:- ' Maintainability of a proceeding is one thing while its entertainment is another. When the proceeding is maintainable by two different Courts, one being inferior or subordinate to the other, then it is certainly a question of propriety, particularly for the superior court, as to whether it should entertain such a proceeding which could have been filed in the lower Court. ' The Court also noted that a revision is not a statutory right of a litigant but it is a matter of discretion of the Court having revisional jurisdiction.

11. The case of Padmanabh K. Kamat (supra) was followed by this Court in the case of K/s. K.K. Agencies v. A.C. Ramanujam (supra) by observing that :-

" There is no doubt that the principle laid down in the judgment in Padmanabh's case (supra) is salutary. It is established law that where two fora are equally competent to entertain a proceeding, it is desirable that the subordinate forum is left to deal with the matter. Even the judgment in Padmanabh's case (supra) clearly postulates that there is no bar to the jurisdiction of the High Court under Section 397 Cr.P.C. for entertaining a revision application against an Order made by the Judicial Magistrate First Class. It only reiterates a rule of prudence. "

12. Again this Court in the case of Ms. Cerena D'Souza (supra) held the case of Madhavlal Pittie (supra) merely reiterated that both the courts have concurrent jurisdiction. This Court further held that it needed no clarification that the Sessions Court and the High Court so far as revisions are concerned have been given the concurrent jurisdiction. It is also true that out of these two Forum the person can select any one of his choice. This right is not affected or taken away. However, the question is of propriety and since two Judges of this Court have taken a consistent view, the Court proposed not to take a different view. The Court further held that on the ground of propriety and in absence of special circumstance the revision petition ought to be sent for decision to the Sessions Court.

13. The case of M/s. Prashika v. M/s Koshy Builders (supra) is not at all in conflict with either the decision of the Division Bench of this Court in the case of Madhavlal Pittie (supra) . In fact, this court in the case of M/s Prashika (supra) clearly stated that ;-

" I do not propose to go into that issue today as it is settled law that against an order of a revisional Court no second revision is maintainable." The Court also held that the fact that the petition was admitted was by itself an exceptional circumstance to hear and decide the revision application.

Likewise, if at all this court entertained the revision application in the case of M/s. K.K. Agencies (supra) it is because the Court found that the case had some special features and it was necessary to set at rest misapprehensions entertained by the subordinate courts on the issue being decided therein once for all.

14. It is true that there is a bar created on second revision by sub-rule (3) of S.397 of the Code. But if there is an erroneous order passed by a Judicial Magistrate and if the same can be corrected in revisional jurisdiction by the Court of Sessions, there is no reason why an aggrieved party should approach this Court. If at all the error committed by a Judicial Magistrate does not get corrected, in the view of the party, in revision before the Sessions Court, then certainly in appropriate cases such a party can always approach this Court under its inherent jurisdiction saved under S.482 of the Code. This principle has been laid down by the Supreme Court in the case of **V.C. Shukla v. State through C.B.I. (A.I.R. 1980 S.C. 962)** wherein the Supreme Court, speaking through a four-Judge Bench, held that sub-section (3) of S.397, of the Code does not limit at all the inherent powers of the High Court contained in S.482 of the Code and it merely curbs the revisional power given to the High Court or the Sessions Court under S.397(1) of the Code. The same principle has been restated in the case of **Krishnan and another v. Krishnaveni and another (A.I.R. 1997 S.C. 987)** . As long as an error can be corrected, it hardly matters whether it is corrected by the Court of Sessions or by this Court.

15. In the case of **P.K. Mitra v. State of West Bengal (A.I.R. 1959 S.C. 144)** referred to by the Division Bench of this Court in the case of Madhavlal Pittie (supra), it was held that a revision is not a right vested in the party and, in my view, if a party has no right he would have no choice either. When jurisdiction has been conferred on two courts concurrently namely the Court of Session and the High Court, then it is certainly the choice of the superior court whether

a revision petition should be entertained by it or not by allowing a party to by-pass the inferior court. In other words, revision jurisdiction undoubtedly also belongs to this Court, but is required to be used only sparingly. These are but self imposed limitations.

16. In my view, there is absolutely no conflict in the views held by this Court in the decisions referred to hereinabove. It is now an unwritten law settled by propriety, practice and prudence that a party ordinarily should approach the Court of Sessions first in revisional jurisdiction and only in exceptional cases that this Court will allow a party to invoke its revisional jurisdiction by by-passing the Court of Session. It is submitted that the litigants would not know as to what would be the special and exceptional circumstances when they are required to approach this Court. In this regard, it may be stated that there cannot be any strait jacket formula to find out what would be the special and exceptional circumstances in a given case, but that will always depend on facts and circumstances of each case and it will be for this Court to find out the same and in appropriate cases entertain a revision application. In my view, there is nothing special or exceptional in the case of the complainant, for this Court to entertain this revision.

17. With the above observations and following the practice adopted by this Court in the cases of Padmanabh Keshav Kamat (supra) and Ms. Cerena D'Souza (supra) I direct the return of the revision petition to the petitioner who will be at liberty to present the same to the Court of Sessions within a period of ten days after the same is returned to him. The learned Sessions Judge is

hereby directed to decide the said revision application, if presented, as expeditiously as possible and in any event within a period of 45 days. No costs.

N. A. BRITTO, J.

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